Ibec
For Irish Business

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March 7th, 2022

Re: Consultation on a Territorial System of Taxation

Ibec represents the interests of Irish business including indigenous and multinational enterprises, and SMEs, spanning all sectors of the Irish economy. Ibec is Ireland's largest lobby group and business representative. We campaign for real changes to the policies that matter most to business. Policy is shaped by our diverse membership, who are home grown, multinational, big and small and employ 70% of the private sector workforce in Ireland. With 41 trade associations covering a range of industry sectors, 6 offices around Ireland as well as an office in Brussels and over 250 employees, Ibec communicates the Irish business voice to key stakeholders at home and abroad.

General Comments on policy benefits

It is key that in response to tax, trade and other challenges Ireland reacts proactively to ensure that multinational investment of both the Irish headquartered and foreign variety will remain central to the Irish growth story. And even though it may not be as central to that story in the future, tax competitiveness will still play a role.

The last number of years have seen a significant change in the Irish corporate tax landscape already. Since 2018 alone we have seen the introduction of Controlled Foreign Company Rules, the BEPS Multilateral Instrument, an ATAD compliant Exit Tax, Hybrid Mismatch Rules, updated Transfer Pricing rules, new ATAD Interest Limitation rules and Mandatory Disclosure Rules. The coming years are also likely to see moves toward implementation of Public Country-by-Country Reporting. This is all before we get to broader discussions about the changing international tax landscape. In many cases, these changes have been layered on top of an existing regime which has become excessively complex relative to our international peers.

Ibec supports a move to a territorial system of taxation for Ireland on the basis that there are many wide-reaching policy benefits of such a move. Firstly, as outlined in the Coffey Report, the current worldwide system has formed in a piecemeal fashion over time, which has resulted in an extraordinarily complex system which places undue administrative

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burdens on businesses. Additionally, the complexity of the current system increases both the cost of compliance and the risk of error among the affected corporations. A territorial system would provide more certainty for business and reduce the associated administrative costs. This system should be introduced from Jan 1, 2023, in order that Ireland does not lose out from a competitiveness perspective as companies react to the introduction of Pillar 2 of BEPS.

The complexity of the current system is also a competitiveness issue. Ireland is unusual among OECD countries as one of the few member states with a worldwide taxation system. Most countries have an exemption methodology for dividends and capital gains. The adoption of a territorial system would bring us in line with other OECD members and closer to the international standard. As things stand, MNCs choosing where to locate activity are faced with a choice between the complex Irish regime and the certainty and ease of many competitor countries.

Simplification and streamlining of our corporate tax system provides an opportunity to increase Ireland's attractiveness for investment. In light of global tax reforms currently underway, improving Ireland's offering in attracting FDI will remain a key priority into the future. However, it is also vitally important to encourage and support the international growth of Irish business who can remain headquartered in Ireland. Reform of the worldwide system offers a welcome opportunity to increase the ease of doing business in Ireland and further develop Ireland's attractiveness as a place to do business beyond headline tax rates. This review of the current regime offers a valuable opportunity to overcome the many limitations of the existing system and improve and streamline our corporate tax regime.

As outlined in previous submissions to both the Public Consultation on the OECD International Tax Proposals and the Commission on Taxation and Social Welfare Ibec has also outlined other forms of regime simplification which should be considered, including but not limited to:

- the introduction of a participation exemption for dividends,
- ending the multi-rate system over time, dealing with issues where rule overlay has resulted in complexity (for example interest deductibility rules and transfer pricing on domestic transactions,
- and allowing related businesses to compute income tax on a consolidated basis as a single entity ('fiscal unity'), in a manner similar to consolidation for financial reporting purposes.

Views on specific elements of the regime

While Ibec's membership is in favour of the move to a territorial system, there is a strong preference that any decisions around the technical implementation of a territorial taxation

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regime should not undermine the main benefit of the transition, the increased simplicity and lower administrative burden for businesses. While robust anti avoidance measures are a necessary part of any tax regime, any additional measures introduced as a result of the move towards a territorial system should be made with a view to keeping compliance costs as low as possible and maintaining simplicity.

There are strong precedents elsewhere in the world in transitions to this type of regime. Indeed, Ireland is unusual as the only EU country left operating this type of regime and one of only four OECD countries doing so. Most countries operate an exemption system with complimentary exemptions for branch profits. Most systems also apply to all foreign sourced dividends. In the context of BEPS, ATAD and both Pillar 1 and Pillar 2 – where global tax systems are becoming more standardised – this should apply, at least, to all members of the Inclusive Framework on BEPS. In addition, there are several examples (not least the UK) operating elective regimes – which should form the basis for the new Irish regime. An elective system for multiple years could be considered similar to the 3 year Irish Interest Group under ILR.

Regarding a proposed review of schedule 24, it is the view of Ibec's members that the outcome of such a review would be unlikely to provide the same level of certainty and simplicity for businesses as a move to a territorial regime, and so the focus should remain on a best practice change toward territoriality. However, we believe that the new regime should remain an elective one, with the retention of a simplified Schedule 24 as an optional system for some corporations who, based on their facts and circumstances many need to avail of it, with the territorial system remaining the more widely availed of default.

Schedule 24 is extremely complex to implement and its evolution over many years to reflect changes in policy and European case law have in some cases brought some more certainty of treatment and in others complicated its application. In our view, the distinction and interaction between trading income and non-trading income is one of complicating factors in the current foreign tax credit regime and this distinction is unusual in a EU and global context. While the importance of the 25% tax rate is acknowledged when Ireland was sustaining its 12.5% tax regimen the elimination of this rate in the context of Pillar 2 would also greatly facilitate the reduction of the complexity in any surviving or elective foreign tax credit regime for dividends. This would also be more consistent with international norms.

Recent years have seen significant evolution of Ireland's corporation tax regime, with a particular view to reducing avoidance, increasing transparency, and protecting the corporate tax base. The transposition of ATAD into Irish legislation, introduction of an exit tax, reform of Ireland's transfer pricing rules and the ongoing adoption of additional measures through the BEPS process, among others, all contribute to the security and robustness of the Irish corporate tax system.

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In this context, the Controlled Foreign Country (CFC) rules are unlikely to require any significant revision as firstly, the CFC rules were introduced to be compliant with the adoption of common rules under ATAD. Secondly, they are in line with similar CFC rules in other countries which operate territorial systems similar to those proposed in the consultation. As a result, there is unlikely to be a need for extensive adaptations to align the current CFC rules with either a participation or branch exemption system. We believe that consideration of the CFC rules in the context of the implementation of Pillar 2 may lead to further simplification and certainty for Irish based businesses.

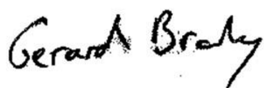
In addition, and particularly in the context of existing restrictive interest limitation rules, introduced Jan 2022, it is unclear what the basis for further restrictions on the deductibility of interest. The introduction of the interest limitation rules for Irish businesses can lead to a disallowance of interest expense simply because the relative size of the Irish economy and their business operations. However, investment policy should continue to encourage Irish indigenous business to invest and grow internationally. This should ensure that companies remain headquartered in Ireland with high quality jobs in all disciplines and there is an income stream of foreign repatriated earnings to Ireland that can be reinvested and promote economic growth. In this regard, maintaining interest deductibility for outbound investment for business growth would be very important.

Finally, the question of the repatriation of legacy earnings need to be addressed in any consultation. A once off repatriation program in a short transitional period should be considered and could be linked to EU co-operative regimes or the merging global minimum tax regime.

Conclusion

This review of the worldwide corporate tax regime is a valuable opportunity to improve our corporate tax system, provide more certainty and simplicity for business and bring Ireland further into alignment with international norms. We support a move towards a territorial system and thank the Department of Finance for seeking our input on this important issue. We are more than happy to engage on these and other related issues in the future.

Kind regards,



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